

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 23-67-A

July 9, 2024

Investigation by the Department of Public Utilities on its own Motion into Establishing Guidelines for Municipal Aggregation Proceedings.

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Electric Restructuring Act of 1997 established that cities and towns in the Commonwealth may create load aggregation programs that allow municipalities to arrange for the purchase of electricity supply for the benefit of their residents and businesses. An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein, St. 1997, c. 164, § 247, codified at G.L. c. 164, § 134(a). Pursuant to G.L. c. 164, § 134(a), municipal aggregation plans (“Plans”) must be submitted to the Department of Public Utilities (“Department”) for review and approval. As of July 9, 2024, the Department has approved 199 Plans. In addition to the statutory requirements of G.L. c. 164, § 134(a), the Department has developed a body of precedent applicable to existing municipal aggregation programs (“Programs”) as well as new Plans filed with the Department for approval. See, e.g., City of Fitchburg, D.P.U. 20-117, at 23-24, 46 (2022); City of Lowell, D.P.U. 12-124, at 44-46 (2013); Cape Light Compact, D.P.U. 14-69, at 42 (2015); City of Medford, D.P.U. 18-106, at 11-12 (2019).

On August 18, 2023, the Department issued an Order opening an investigation into establishing municipal aggregation guidelines. Investigation into Establishing Guidelines for Municipal Aggregation Proceedings, D.P.U. 23-67 (2023). That Order included draft guidelines (“Draft Guidelines”) and requested comments from interested stakeholders. D.P.U. 23-67, at 9. The Draft Guidelines memorialized the existing precedent the Department had developed through various Orders on individual Plans. D.P.U. 23-67, at App. A. Between September 14, 2023 and November 6, 2023, the Department received more than 40 initial comments and twelve

reply comments from a diverse group of stakeholders,¹ almost all of which were opposed to large portions of the Draft Guidelines. In their comments, several stakeholders requested that the Department conduct a technical session to express their concerns and perspectives as the entities involved with implementing Programs.²

On November 15, 2023, the hearing officers issued a memorandum scheduling a technical session, which was convened on December 20, 2023. At the technical session, the Department presented a straw proposal with revised guidelines incorporating many of the comments filed with the Department and led a productive discussion regarding further changes to the straw proposal guidelines. A group of stakeholders comprising three municipal aggregation consultants – Colonial Power Group, Inc. (“Colonial Power”), Good Energy, L.P. (“Good Energy”), and Peregrine Energy Group/MassPowerChoice, LLC (“MassPowerChoice”) – and the Cape Light Compact JPE (“Consultant Group”) volunteered to further revise the guidelines, by incorporating the changes discussed during the technical session, and then submitting their version of the guidelines to the distribution list in D.P.U. 23-67. On December 22, 2023, the hearing officers issued a memorandum announcing that, in an effort to

¹ Commenters included the Attorney General of the Commonwealth of Massachusetts (“Attorney General”), the Massachusetts Department of Energy Resources (“DOER”), municipal aggregation consultants, the Cape Light Compact JPE, state senators and representatives, municipal representatives, environmental and public interest groups, and electric distribution companies.

² See, e.g., Initial Comments of the Attorney General (October 6, 2023), Initial Comments of the Green Energy Consumers Alliance (October 6, 2023), Supplemental Initial Comments of Municipal Aggregators (City of Malden, City of Melrose, City of Quincy, Town of Andover, Town of Arlington, Town of Dracut, Town of Winchester) (October 6, 2023).

develop broad consensus across the various stakeholders, the Department would convene a stakeholder working group, open to all interested stakeholders, to discuss the Consultant Group's proposal and other issues that stakeholders may seek to address.

The Consultant Group submitted their proposed revised guidelines on January 12, 2024. From this point, the Department and stakeholders engaged in an iterative process of discussing and editing the revised guidelines, which included holding several working group meetings, presenting guideline revisions from Department staff and the Consultant Group, and DOER submitting an annual report template and best practices document. A summary of the events in this proceeding is set forth in Table 1.

Table 1.

Date	Action
January 24, 2024	First working group meeting, Department staff agrees to revise Consultant Group's proposed guidelines to reflect working group discussions
January 26, 2024	Department staff issues hearing officer memorandum with next steps
February 2, 2024	Department staff distributes revised guidelines to distribution list
February 16, 2024	Department staff issues hearing officer memorandum summarizing the steps staff has taken since the first working group meeting and announcing a second working group meeting to be held on February 27, 2024
February 20, 2024	DOER submits annual report template in Excel format
February 27, 2024	Second working group meeting, focusing on refining templates
March 1, 2024	Department staff distributes revised templates to reflect working group discussions
March 8, 2024	Consultant Group submits revised version of proposed guidelines and templates

March 12, 2024	Department staff issues hearing officer memorandum announcing a third working group meeting to be held on March 20, 2024
March 20, 2024	Third working group meeting
April 2, 2024	Department staff issues hearing officer memorandum with proposed final guidelines requesting stakeholders to comment on whether they would support, neither support nor oppose, or oppose the adoption of the proposed final guidelines
April 10, 2024	Department staff issues hearing officer memorandum with DOER-developed best practices and annual report template
April 17, 2024	Comments received in response to April 2, 2024 hearing officer memorandum
April 26, 2024	Department staff issues hearing officer memorandum with revisions to proposed final guidelines, responding to comments submitted on April 17, 2024
May 6, 2024	Consultant group submits revisions to staff's proposed final guidelines
May 15, 2024	Department staff issues hearing officer memorandum with revised proposed final guidelines announcing a fourth working group meeting to be held on May 23, 2024
May 23, 2024	Fourth working group meeting

On June 4, 2024, the Consultant Group and twelve other entities³ (“Joint Petitioners”) submitted a motion to approve the jointly negotiated municipal aggregation guidelines and related attachments⁴ (“Proposed Guidelines”) (“Motion”), which represents a settlement of the

³ Signatories to the joint motion are: Cape Light Compact JPE, Colonial Power, Good Energy, MassPowerChoice, City of Boston, Town of Dartmouth, Town of Marshfield, Town of Rockland, Town of Townsend, DOER, Attorney General, Green Energy Consumers Alliance, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, NRG Retail Companies, and PowerOptions, Inc.

⁴ The attachments are the supporting tables to the municipal aggregation guidelines.

issues presented. The Joint Petitioners state that while they do not fully agree on all issues, they do agree that the Proposed Guidelines and Plan Templates should significantly improve the effectiveness and efficiency of the Department's Plan review and approval process (Motion at 2). On June 5, 2024, Department staff issued a hearing officer memorandum requesting comments on the Motion. On June 20, 2024, the Department received a letter from 14 municipalities requesting that the Department approve the Motion and Proposed Guidelines.⁵ The Department received no additional comments.

II. SUMMARY OF PROPOSED GUIDELINES

The Joint Petitioners state that the Proposed Guidelines embrace an approach that provides for greater discretion for Municipalities in the development and operation of their Plans⁶ and Programs, accompanied by greater transparency that will allow for improved public scrutiny (Motion at 2).⁷ The Joint Petitioners state that, with respect to greater discretion, the Proposed Guidelines are based on the underlying principles that: (1) to optimize the value that Programs can offer and the contribution that such Programs can make to attaining the Commonwealth's clean energy goals, Municipalities require the flexibility to adapt to changing

⁵ The municipalities are: Town of Acton, Town of Brookline, City of Cambridge, City of Chelsea, City of Easthampton, Town of Lexington, Town of Milford, City of Newton, Town of Plainville, City of Salem, Town of Sudbury, Town of Uxbridge, Town of Weston, and Town of Winchester.

⁶ Capitalized terms used throughout this Order, and which are not memorialized herein, are terms that are defined in the Proposed Guidelines.

⁷ The Joint Petitioners note that the Proposed Guidelines closely track the Example Guidelines developed by Department staff that were the subject of discussion during the technical session held on December 20, 2023 (Motion at 2).

market conditions in a timely manner; and (2) Municipalities are best suited to identify the types of supply products that will best meet the wants and needs of their constituents (Motion at 2-3).

The Joint Petitioners state that, with respect to greater transparency, the Proposed Guidelines require that Municipalities provide the public with access to Program information on an ongoing basis which, among other things, advises constituents of their Product options and how to avail themselves of such options (Motion at 2-3). The structure of the Proposed Guidelines is as follows:

- I. Purpose
- II. Definitions
- III. Procedural Requirements
- IV. Plan Elements
 - A. Organization Structure
 - B. Programs Operations
 - 1. Statutory Requirements
 - 2. Procurement of Supply
 - 3. Product Information
 - 4. Other Funding Sources/Other Costs to Participants
 - 5. Customer Enrollment
 - 6. Customer Notification
 - 7. Access to Ongoing Program Information
 - 8. Program Termination
 - C. Rights and Responsibilities of Program Participants
- V. Department Review
- VI. Annual Reports
- VII. Applicability of Rules Governing the Restructuring of the Electric Industry
- VIII. Notifications to Electric Distribution Companies
- IX. Plan and Program Changes
- X. Implementation of Guidelines
- XI. Waiver

III. STANDARD OF REVIEW

Consent agreements and settlement agreements filed with the Department have substantially the same purpose: to resolve a proceeding or part of a proceeding. In assessing the reasonableness of an offer of settlement, the Department reviews all available information to

ensure that the settlement is consistent with Department precedent and the public interest. Fall River Gas Company, D.P.U. 96-60 (1996); Essex County Gas Company, D.P.U. 96-70 (1996); Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the stakeholders does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. D.P.U. 95-104, at 15; D.P.U. 88-28/88-48/89-100, at 9.

IV. ANALYSIS AND FINDINGS

A. Introduction

As discussed below, the Proposed Guidelines represent, in certain respects, a significantly different approach to the Department's oversight of Programs than the approach set forth in the D.P.U. 23-67 Draft Guidelines (which, in large part, memorialized the Department's directives and rules established through our prior Orders).⁸ In certain areas, the Draft Guidelines reflected a "prescriptive" oversight approach, while the Proposed Guidelines accept an approach that strikes a balance between discretion (*i.e.*, providing municipal aggregators with flexibility in the design and operation of their Programs) and transparency (*i.e.*, ensuring that the public has ready access to useful information about such design and operation).

Below, the Department first addresses whether the Proposed Guidelines comply with the statutory requirements set forth in G.L. c. 164, § 134(a) related to process, Program operations,

⁸ The Department stated that compiling its municipal aggregation directives and rules in a single document should allow it to simplify the review process, to the benefit of both the Municipalities and the Department. D.P.U. 23-67, at 3.

and Plan elements. The Department then addresses key provisions of the Proposed Guidelines that illustrate its treatment of discretion and transparency.

B. Statutory Requirements

1. Procedural Requirements

General Laws c. 164, § 134(a) sets forth the process by which a Municipality may develop a Plan for aggregating the electric load of interested electric customers within its boundaries. Section III.A of the Proposed Guidelines requires that a Plan provide documentation that the Municipality complied with this requirement.

General Laws c. 164, § 134(a) requires that a Municipality consult with DOER in the development of its Plan. Section III.B of the Proposed Guidelines requires that a Municipality provide documentation that it complied with this requirement by consulting with DOER before public review of the Plan. The Proposed Guidelines further require that the consultative practice includes a review and discussion of the DOER Recommended Best Practices for Advancing Clean Energy in Municipal Aggregation Plans (“DOER Best Practices”).⁹

General Laws c. 164, § 134(a) requires that a Municipality allow for public review of its proposed Plan for a minimum of 30 calendar days. Accordingly, Section III.B of the Proposed Guidelines requires that a Plan: (1) identify the dates during which the proposed Plan was available for public review; (2) identify and describe the ways by which the public could access

⁹ The DOER Best Practices were developed by DOER and may be updated by DOER after consultation with the Department and stakeholders. See Proposed Guidelines, Section IV.B.4.b iii. The Department will post the current version of DOER Best Practices on the Municipal Aggregation page of its website: <https://www.mass.gov/info-details/municipal-aggregation>.

the Plan;¹⁰ (3) describe how the Municipality provided access to the Plan for those who (i) are hard to reach, have limited English proficiency, require audial or visual assistance, and/or may not routinely access the Municipality's website, and/or (ii) reside in an Environmental Justice Population;¹¹ and (4) describe the process by which the Municipality incorporated public feedback. The Proposed Guidelines include the recommended practice that Municipalities provide access to the Plan through a link prominently displayed on the municipal website.¹²

Consistent with the discussion above, the Department finds that the Proposed Guidelines comply with the statutory requirements related to the development and review of a Plan in participating communities.

2. Program Operations Requirements

General Laws c. 164, § 134(a) requires that a Plan provide for universal access, reliability, and equitable treatment of all customer classes.

¹⁰ Proposed Guidelines Attachment III.C ("Public Access") sets forth a template for this information.

¹¹ In Massachusetts, an environmental justice population is a neighborhood that meets one or more of the following criteria: (1) the annual median household income is not more than 65 percent of the statewide annual median household income; (2) minorities comprise 40 percent or more of the population; (3) 25 percent or more of households lack English language proficiency; or (4) minorities comprise 25 percent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide annual median household income. See Environmental Justice Policy of the Executive Office of Energy and Environmental Affairs (Updated June 24, 2021) available at <https://www.mass.gov/doc/environmental-justice-policy6242021-update/download>.

¹² If a Municipality did not include this recommended practice, the Plan must provide an explanation.

With respect to universal access, Section IV.B.1.a of the Proposed Guidelines requires that a Plan specify that all electric customers residing or located in the Municipality are eligible to participate in the Program, whether through an automatic enrollment process or upon request of the customer to join the Program.¹³ The Plan must describe all proposed conditions or restrictions on participation in the Program.

With respect to reliability, Section IV.B.1.b of the Proposed Guidelines requires that a Plan describe the steps the Municipality will take to ensure a continuous power supply for Participants, thus ensuring that the Program can serve Participants without interruption. The Plan may demonstrate that the Municipality has the technical expertise necessary to operate and manage the Program by retaining a Consultant that is an Electricity Broker¹⁴ licensed to provide municipal aggregation consulting services.¹⁵

With respect to equitable treatment of customer classes, Section IV.B.1.c of the Proposed Guidelines requires that a Plan identify those elements for which there may be variances in treatment between customer classes or subclasses¹⁶ and explain why the varied treatment is reasonable and appropriate in consideration of the disparate characteristics of each customer class or subclass.

¹³ Section IV.B.5 of the Proposed Guidelines addresses customer enrollment.

¹⁴ As defined in 220 CMR 11.00.

¹⁵ Pursuant to the Proposed Guidelines, the Department approves those entities that are (1) Electricity Brokers and (2) providing consulting services to Department-approved Programs in the Commonwealth on or before the date of this Order approving these Guidelines, to be licensed to provide municipal aggregation consulting services.

¹⁶ Proposed Guidelines Attachment IV.B.1.c sets forth a template for this information.

Consistent with the discussion above, the Department finds that the Proposed Guidelines comply with the statutory requirements related to Program operations.

3. Plan Elements

General Laws c. 164, § 134(a) requires that a Plan include: (1) an organizational structure of the Program, its operations and its funding; (2) rate setting and other costs to Participants; (3) the methods for entering and terminating agreements with other entities; (4) the rights and responsibilities of Program Participants; (5) termination of the Program; and (6) provisions for the automatic enrollment of eligible customers and the opt-out notifications to be sent to these customers. The Proposed Guidelines categorize as Program Operations the following Plan elements: Procurement of Supply, Product Information, Other Funding Sources/Other Costs to Participants, Customer Enrollment, Customer Notifications, and Program Termination (as well as Access to Ongoing Program Information).

With respect to organizational structure, Section IV.A (Organizational Structure) of the Proposed Guidelines requires that a Plan identify the entity or entities (i.e., Municipality, Consultant, Program Supplier) that will perform core functions of the Program and identify where in the Plan the applicable tasks are described.¹⁷

With respect to the methods for entering and terminating agreements, Section IV.B.2 (Procurement of Supply) of the Proposed Guidelines requires that a Plan identify the steps by which the Municipality intends to procure supply for the Program.¹⁸ Following Department

¹⁷ Proposed Guidelines Attachment IV.A sets forth a template for this information.

¹⁸ These steps include (but are not limited to) issuance of a request for quotes and proposals, evaluation/selection of bids or proposals, and negotiating and executing contracts with

approval of its Plan, a Municipality must file updated anticipated timelines for procuring supply within 14 days of such approval and monthly thereafter¹⁹ until the Municipality has provided notification of contract execution to the applicable Electric Distribution Company.²⁰

With respect to rate setting, Section IV.B.3 (Product Information) of the Proposed Guidelines requires that a Plan identify the components that will comprise the rates to be charged to Participants, including but not limited to, costs associated with: (1) supply and renewable energy content; (2) Consultant services; (3) Municipality services; and (4) other services related to the Program.²¹ If, at the time of a Plan filing, a Municipality has not made determinations on Product selections, the Plan must identify and describe the factors/criteria that the Municipality will consider in making such determination.

With respect to Program funding and other costs to Participants, Section IV.B.4 (Other Funding Sources/Other Costs to Participants) of the Proposed Guidelines specifies that a Plan must identify (1) sources of Program funding other than Product rates, and (2) types of costs that Participants will incur outside of Product rates.

With respect to automatic enrollment and the Opt-Out Notification, Section IV.B.5.a (Initial Enrollment) of the Proposed Guidelines specifies that a Municipality may enroll

selected Program Suppliers. Proposed Guidelines Attachment IV.B.2A sets forth a template for this information.

¹⁹ The Municipality must file the updated expected timelines in its docketed proceeding and with the Electric Distribution Companies serving Electric Customers within the Municipality.

²⁰ See Section V.C.4, below.

²¹ Proposed Guidelines Attachment IV.B.3 sets forth a template for this information.

Auto-Enroll Customers within 30 days after its Plan becomes operational, provided that, prior to enrollment, the Municipality shall deliver an Opt-Out Notice to all Auto-Enroll Customers, and provide these customers with at least 30 calendar days, plus an additional six days to account for delivery, to opt out. Section IV.B.6. (Opt-Out Notice) of the Proposed Guidelines specifies the information to be included in the Opt-Out Notices.

With respect to Program termination, Section IV.B.8 (Program Termination) of the Proposed Guidelines identifies the information that a Plan must include related to Program termination. The Proposed Guidelines establish a two-year stay-out for previously terminated Programs.

With respect to the rights and responsibilities of Participants, Section IV.C (Rights and Responsibilities of Program Participants) of the Proposed Guidelines specifies that a Plan must provide that Participants may: (1) select any of the Products offered to the applicable customer class or subclass; (2) switch from one Product to another by contacting the Municipality; and (3) leave the Program at any time by contacting the Municipality or the Electric Distribution Company. The Proposed Guidelines include the recommended practice that Municipalities allow Participants to leave the Program at any time without penalty (if a Municipality does not intend to follow this practice, the Plan must provide an explanation).

Consistent with the discussion above, the Department finds that the Proposed Guidelines comply with the statutory requirements related to Plan elements.

C. Other Provisions

1. Introduction

In this section, the Department addresses key provisions of the Proposed Guidelines that illustrate its treatment of discretion and transparency.

2. Access to Ongoing Program Information

Section IV.B.7.b of the Proposed Guidelines specifies the information a Municipality must make publicly available for the previous calendar year, related to: (1) Product rates, renewable energy content, and participation;²² (2) revenue collected through each rate component, with a detailed accounting of the services provided;²³ (3) the number of megawatt-hours of electricity provided through the Program that will be matched to voluntary renewable energy certificates, by renewable energy category;²⁴ (4) organizational structure; (5) equitable treatment of customer classes; (6) procurement of supply; (7) how the Municipality made ongoing Program information available to the public; and (8) (if applicable) other funding sources/other costs to Participants. A Municipality must also provide representative copies of customer notifications sent during the previous year,²⁵ as well as general Program-related documents and information.

The Department considers this provision -- access to ongoing Program information -- of the Proposed Guidelines to be of the utmost importance in that it provides constituents and

²² Proposed Guidelines Attachment IV.B.7.b.i sets forth a template for this information.

²³ Proposed Guidelines Attachment IV.B.7.b.ii sets forth a template for this information.

²⁴ Proposed Guidelines Attachment IV.B.7.b.iii sets forth a template for this information.

²⁵ Section IV.B.6 of the Proposed Guidelines addresses customer notifications.

interested stakeholders with ready access to useful Program-related information presented in an understandable way²⁶ -- thereby functioning as the cornerstone of transparency.²⁷ It is in the context of the increased public scrutiny provided by this provision of the Proposed Guidelines that the Department addresses, in the sections below, the level of discretion that is afforded Municipalities.

3. Plan and Program Changes

Section IX of the Proposed Guidelines specifies that a Municipality may modify its Plan in a manner consistent with these Proposed Guidelines without Department approval, provided that it allows at least 30 calendar days for public review of the revised Plan. Following public review, the Municipality shall submit the revised Plan to the Department for informational purposes.²⁸

The Department notes that this approach differs markedly from the approach set forth in the Draft Guidelines, which would require a Municipality to submit an amended Plan for Department review “if the approved Plan no longer fully and accurately describes the operations of the Program.” Draft Guidelines, Section IV.D.1. Examples of changes that would require an amended Plan pursuant to the Draft Guidelines include: (1) new Products (including changes in

²⁶ The Department notes that the Proposed Guidelines provide discretion to Municipalities to present the information in the way they consider to be most useful to their residents and businesses.

²⁷ Municipalities will provide this same information as part of their Annual Reports to the Department (Section VI of the Proposed Guidelines).

²⁸ If a Municipality is uncertain whether a proposed revision is consistent with these Proposed Guidelines, it may request a consultation with the Department.

renewable energy content); (2) new charge or adder (now referred to as rate component); (3) change in method for entering contracts (including the person or entity responsible for executing the contract); and (4) change in the manner in which the Municipality sets its prices. Draft Guidelines, Section IV.D.1.

The Department agrees with the Joint Petitioners that it is essential that Municipalities be able to respond to market conditions in a timely manner to optimize both the benefits they provide to their constituents and the contributions they can make toward achieving the Commonwealth's clean energy goals (Motion at 3). The Proposed Guidelines accommodate this need for flexibility, while the Draft Guidelines do not. As such, the Department considers this provision of the Proposed Guidelines to be a significant improvement over that set forth in the Draft Guidelines. As with all applicable provisions of the Proposed Guidelines, the Department finds that the discretion afforded a Municipality in operating its Program is reasonably and appropriately balanced by the transparency resulting from the provisions of Section IV.B.7 (Access to Ongoing Programming Information) of the Proposed Guidelines.

4. Notifications to Electric Distribution Companies

Section VIII of the Proposed Guidelines identifies the steps in the Plan development process when a Municipality must notify each Electric Distribution Company serving Electric Customers within the Municipality.²⁹ In addition, a Municipality must notify each Electric Distribution Company when it has executed an Electric Supply Agreement with a Program

²⁹ These steps are upon (1) submitting its proposed Plan to DOER for consultation, (2) filing its initial Plan with the Department, and (3) receiving a Department Order approving its Plan.

Supplier. Further, a Municipality will not initiate the process of enrolling customers until at least 60 days from when the Program Supplier provides the information necessary to enroll customers. Finally, a Municipality shall file the notification in its docketed proceeding.

This notification requirement, along with the procurement reporting requirements set forth in Section V.B.3, above, are intended in large part to provide increased certainty to Basic Service suppliers related to municipal aggregation by reporting on a Plan's activity during the initiation, regulatory review, and procurement phases. The Department notes that this approach differs markedly from the approach set forth in the Draft Guidelines, which would require that a Municipality that failed to "launch" its Program by the date identified in the Plan to wait at least 60 days from the initial launch date to "re-launch" the Program. Draft Guidelines, Section IV.B.

Consistent with the discussion above, the Department considers it essential that Municipalities be able to respond to market conditions in a timely manner. The Draft Guidelines, with its prescribed 60-day "stay-out," do not accommodate this. In contrast, the Proposed Guidelines strike an appropriate balance between discretion (regarding the timing of Municipalities launching their Programs) and transparency (ongoing reporting).

5. Applicability of Rules Governing the Restructuring of the Electric Industry -- 220 CMR 11.00

Section VII of the Proposed Guidelines specifies, among other things, that Program Suppliers are exempt from (1) the requirement to mail information disclosure labels to Participants,³⁰ and (2) the requirements established in Investigation into Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market,

³⁰ See 220 CMR 11.06.

D.P.U. 19-07-A (2020),³¹ stating that the subject matter of these requirements is addressed by Section IV.B.6 (Customer Notifications) and Section VI (Annual Reports) of the Proposed Guidelines. Here, the discretion provided to Municipalities is not related to the type of information to be provided; Sections IV.B.6.a and b of Section VI of the Proposed Guidelines are quite prescriptive regarding the information to be included in the Opt-Out and Product Change Notifications, and Annual Reports. Instead, the discretion relates to the method of delivery. The Department finds that this level of discretion is warranted in that Municipalities are best suited to identify the communication and public access mechanisms that will best meet the wants and needs of their constituents. As with other provisions of the Proposed Guidelines, this discretion is balanced by the transparency achieved through the provisions related to the Opt-Out and Product Change Notifications and public access to ongoing Program information.

6. Implementation of Proposed Guidelines

Section X of the Proposed Guidelines specifies that Municipalities the Plans of which were approved by the Department prior to the date of this Order do not need to file a revised Plan for Department review and approval. However, such Municipalities must comply with the requirements set forth in Section IV.B.6 (Customer Notifications), Section IV.B.7 (Access to Ongoing Program Information), and Section VI (Annual Reports) of the Proposed Guidelines in place of the corresponding requirements in their approved Plan.

The Department finds that this provision of the Proposed Guidelines strikes an appropriate balance between administrative efficiency (not requiring the filing of new Plans) and

³¹ Except for the initiative related to the Energy Switch Website.

transparency (providing the Program information identified in the applicable sections of the Proposed Guidelines).

7. Department Review

Section V of the Proposed Guidelines requires the Department to issue a written Order with its decision on a Plan within 120 days of the date on which a Plan was filed.³² If, upon review, the Department finds that a Plan includes the information requirements set forth above (including supplemental information provided by the Municipality at the request of the Department),³³ the Department will approve the Plan as filed. Conversely, if upon review, the Department finds that a Plan does not include the required information (including supplemental information requested by the Department), the Department will not approve the Plan and will identify the information the Plan must include to warrant Department approval.

To improve the administrative efficiency of the Department's review process (and to accommodate this review period), the Department seeks to develop a Plan filing template ("Plan Template") that would be used by Municipalities submitting Plans for Department review. Accordingly, Department staff will work with stakeholders to develop a Plan Template. The hearing officers assigned to this docket will provide more information on this matter.

³² The Guidelines specify that the 120-day deadline does not apply to the Department's review of Plans submitted by a Municipality that previously terminated its Department-approved Program.

³³ The Department may schedule a conference with the Municipality or its representative to discuss any aspect of the Petition or Plan that may need revision or clarification. The Department may request supplemental information to better determine whether the Plan complies with the statutory requirements addressed above. The Department will include the municipal official(s) identified in Proposed Guidelines Attachment IV.A on all correspondences.

D. Conclusion

In the sections above, the Department finds that the Proposed Guidelines:

- comply with the statutory requirements related to process, Program operation, and Plan elements (Section V.B);
- provide for ready access to useful Program-related information, and thus provide a level of transparency that allows for increased discretion (Section V.C.1);
- allow Municipalities to respond to market conditions in a timely manner (in an effort to optimize the benefits they provide to their constituents and the contributions they can make to achieving the Commonwealth’s clean energy goals) (Section V.C.2);
- strike an appropriate balance between providing Municipalities with discretion related to Program “launch,” and transparency regarding the expected launch date (Section V.C.3);
- provide appropriate discretion to Municipalities regarding the manner in which they provide Program information, recognizing that Municipalities are best suited to identify the communication and public access mechanisms that will best meet the wants and needs of their constituents (Section V.C.4); and
- strike an appropriate balance between administrative efficiency (by not requiring Municipalities with approved Plans to file new Plans) and transparency (by requiring these Municipalities to provide public access to ongoing Program information) (Section V.C.5).

Here, the Department addresses other specific provisions of the Proposed Guidelines.

First, the Department supports the incorporation of the DOER Best Practices into the Proposed Guidelines. As stated above, Section III.B of the Proposed Guidelines requires that Municipalities’ consultation with DOER include a review and discussion of the DOER Best Practices. Section IV.B.3.b of the Proposed Guidelines (“Product Information - Renewable Energy Content”) states that “Municipalities should consider the best practices set forth in DOER Best Practices A Plan shall discuss if the Municipality intends to pursue clean energy through its Program, and if so, what factors and criteria the Municipality will use to guide its final decision-making regarding clean energy programming for the aggregation, with reference to

the DOER Best Practices and the Municipality’s consultation with DOER.” The Department considers this to be a good example of how agencies can work together to advance the Commonwealth’s clean energy goals.

Second, the Department supports the recommended practices that Municipalities provide access to the Plan and ongoing Program information through a link prominently displayed on the municipal website (Sections III.C and IV.B.7 of the Proposed Guidelines); adherence to this practice should result in increased transparency. Third, the Department supports the provision of the Proposed Guidelines that allows Municipalities to demonstrate the technical expertise to develop a Plan and to reliably operate a Program by retaining a Consultant that is an Electricity Broker licensed by the Department to provide municipal aggregation consulting services.³⁴ This provision creates administrative efficiencies in that it removes the necessity of the Department making a finding of reliability in municipal aggregation proceedings by transferring the responsibility to the license application process.

Based on the above and taking into consideration the broad support for the Proposed Guidelines, the Department finds that the Proposed Guidelines are reasonable, adequate, consistent with G.L. c. 164, § 134(a), consistent with the public interest, and produce a just and reasonable outcome. Therefore, the Department, with certain clarifying, non-substantive edits, approves the Proposed Guidelines. The Proposed Guidelines shall be known as the Municipal Aggregation Guidelines and are attached to this Order.

³⁴ The Department notes that it will revise the Electricity Broker license application on this webpage: <https://www.mass.gov/how-to/apply-for-a-competitive-supplier-or-electricity-broker-license> to accommodate this provision.

V. PHASE II: LOW-INCOME COMMUNITY SHARED SOLAR

On June 4, 2024, the Department issued its Order in Revised Model Solar Massachusetts Renewable Target Program Provision, D.P.U. 20-145-D (June 4, 2024). The Department approved an alternative mechanism for low-income community shared solar (“LICSS”) and Community Shared Solar that will allow the allocation of credits through municipal load aggregation programs, so long as the programs meet the requirements established pursuant to G.L. c. 164, § 134(a). D.P.U. 20-145-D at 146-153. The Department found that allowing this alternative mechanism should permit low-income customers to receive a discounted rate or credit on their bills. D.P.U. 20-145-D at 146-153. The Department directed that remaining implementation issues regarding the Department’s role in reviewing and approving municipal aggregation LICSS program designs to be addressed in the process established in D.P.U. 23-67. D.P.U. 20-145-D at 155. The hearing officers assigned to docket D.P.U. 23-67 will provide more information on this matter.

VI. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Motion for Approval of Municipal Aggregation Guidelines filed by the Cape Light Compact JPE, Colonial Power Group, Inc., Good Energy, L.P., Peregrine Energy Group/MassPowerChoice, LLC, City of Boston, Town of Dartmouth, Town of Marshfield, Town of Rockland, Town of Townsend, Massachusetts Department of Energy Resources, Massachusetts Attorney General, Green Energy Consumers Alliance, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, NRG Retail Companies, and PowerOptions, Inc. is

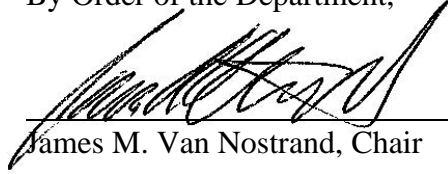
reasonable, adequate, consistent with G.L. c. 164, § 134(a), consistent with the public interest, will result in a just and reasonable outcome, and is GRANTED; and it is

FURTHER ORDERED: That the Municipal Aggregation Guidelines negotiated and filed by the Cape Light Compact JPE, Colonial Power Group, Inc., Good Energy, L.P., Peregrine Energy Group/MassPowerChoice, LLC, City of Boston, Town of Dartmouth, Town of Marshfield, Town of Rockland, Town of Townsend, Massachusetts Department of Energy Resources, Massachusetts Attorney General, Green Energy Consumers Alliance, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, NRG Retail Companies, and PowerOptions, Inc. are reasonable, adequate, consistent with G.L. c. 164, § 134(a), consistent with the public interest, will result in a just and reasonable outcome, and are hereby APPROVED; and it is

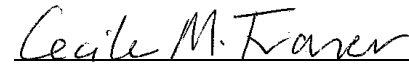
FURTHER ORDERED: That the Municipal Aggregation Guidelines are effective as of the date of this Order;

FURTHER ORDERED: That Municipalities and the Distribution Companies shall comply with all directives contained in the Municipal Aggregation Guidelines.

By Order of the Department,



James M. Van Nostrand, Chair



Cecile M. Fraser, Commissioner



Staci Rubin, Commissioner